

**IN THE MATTER OF:**

**WARREN A. McFARLAND,**

**Complainant,**

**and**

**MERCHANT BAK CARD SYSTEM,**

**Respondent.**

**Charge No.: 2002CA2249**

**EEOC No.: 21BA21673**

**ALS No.: 12225**

## RECOMMENDED ORDER AND DECISION

On October 8, 2003, a three-member panel of the Human Rights Commission entered an order finding Respondent to be in default and referring this matter to the Administrative Law Section for a hearing on Complainant's damages. Although the Commission's order was mailed to both parties, neither party appeared at the appointed time. No motions of any kind have been filed by either party. The matter is ready for decision.

## FINDINGS OF FACT

The following facts were derived from the record file in this matter.

1. On October 8, 2003, a three-member panel of the Human Rights Commission entered an order finding Respondent in default. That order was served upon both parties by mail.
2. On October 23, 2003, the administrative law judge entered an order that scheduled a hearing on Complainant's damages for November 17, 2003. The order mailed to Respondent was returned by the United States Postal Service. The order mailed to Complainant was not returned.

3. Neither party appeared at the damages hearing scheduled for November 17, 2003. Neither party filed a motion to continue the hearing.

#### CONCLUSIONS OF LAW

1. As a result of the default entered against Respondent, there are no liability issues to address.

2. Because of his failure to appear at the hearing on damages, Complainant has abandoned any claim to such damages.

#### DISCUSSION

On October 8, 2003, a panel of the Human Rights Commission entered an order of default against Respondent, Merchant Bank Card System. As a result of that order, there are no liability issues to address. Only damages issues remain to be determined.

On October 23, 2003, an order was entered which scheduled a damages hearing for November 17, 2003. A copy of that order was served upon the parties by first class mail. The order mailed to Respondent was returned. The order sent to Complainant was not returned.

Neither party appeared at the appointed date and time for the damages hearing. Neither party filed a motion to continue the hearing. Complainant has not contacted this office since November 17, 2003 to explain his failure to appear.

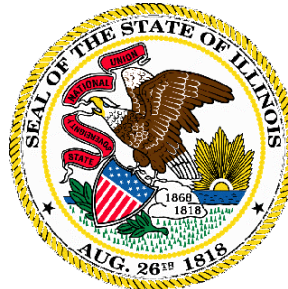
It appears that, despite the default order entered against Respondent, Complainant has abandoned his claim. In such a situation, it is appropriate to allow the default finding to stand, but do deny Complainant any damages. ***Roscoe and Sudden Service Mounting and Finishing***, \_\_\_ Ill. HRC Rep. \_\_\_, (1991CF2070, June 10, 1994); ***Butt and Early Years, Inc.***, \_\_\_ Ill. HRC Rep. \_\_\_, (1989CF2543, April 23, 1994).

#### RECOMMENDATION

Based upon the foregoing, by his failure to appear to prove his damages, Complainant has abandoned his claim to such damages. Because a default order has already been issued

against Respondent, it is recommended that the default order stand, but that an order be entered stating that Complainant has not proven any damages.

HUMAN RIGHTS COMMISSION



BY: \_\_\_\_\_  
MICHAEL J. EVANS  
ADMINISTRATIVE LAW JUDGE  
ADMINISTRATIVE LAW SECTION

ENTERED: December 18, 2003